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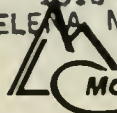
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The Monthly Report
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Montana Legislative Council

SEPTEMBER 1990 HELENA, MONTANA

Vol. VII No. 15

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MONTANA-WESTERN-CANADIAN PROVINCES
BOUNDARY ADVISORY COMMITTEE

Sept. 12 Meeting in Great Falls...A meeting with a delegation from the province of Alberta is scheduled by the Montana-Western Canadian Provinces Boundary Advisory Committee for Wednesday, Sept. 12, at the Rainbow Hotel in Great Falls. The meeting will be held in conjunction with a trade conference entitled Across the 49th Parallel to the Future. The Boundary Advisory Committee's meeting will begin with a luncheon at noon and will conclude at 5 p.m. Subjects to be discussed include:

¶ Highways, increased weight limits on I-15, joint venture weigh station at Coutts, and customs hours at Sweetgrass.

¶ Commerce, Montana trade representation in Alberta.

¶ Natural Resources, status of water development activity, and AltaMont Pipeline.

LEGISLATIVE AUDIT COMMITTEE

Sunrise Review...SB 138 of the 1987 Legislature, the Sunrise Law, established criteria and procedures for reviewing proposals to create new professional or occupational licensing boards. Those reviews are done by the Legislative Audit Committee which also must review proposals to add professions or occupations to the jurisdiction of existing licensing boards.

A major part of the the Sunrise process involves public hearings before the Audit Committee. Those hearings allow members of the public to provide input to the Committee. The first public hearing is set for Oct. 1, on proposals to license midwives, naturopathic physicians, and respiratory care practitioners. Public hearings for property managers and auctioneers are scheduled in November. After the hearings, the Audit Committee will make recommendations to the 52nd Legislature on whether the proposed new professions should be regulated by the State.

LEGISLATIVE COUNCIL

Budget Proposals...The Legislative Council met Aug. 23 and 24, to develop a budget recommendation for the 1992-93 fiscal biennium, consider a classification and pay plan, to hear staff briefings on legislator ethics and on welfare reform, and to consider other matters.

With respect to the budget for "interim studies and conferences", the Council recommended that \$20,000 be appropriated to be used for "regional conferences" and to replace the funds appropriated during the FY 1990-91 biennium for the Five-State Legislative Conference (\$16,498); the Legislative Forestry Task Force (\$8,000); and the Montana Western Canadian Province Boundary Advisory Committee (\$2,000).

The Council recommended that no appropriation be made for the Capitol Building and Planning Committee, a statutory committee charged with current and long-range planning of buildings that are an integral part of the capital. The Council may consider legislation to repeal the law establishing the Committee, Title 5, Ch. 17, MCA.

The Council also recommended that activities associated with the National Conference of State Legislatures and the Council of State Governments be funded for full participation by Montana, including full payment of dues for FY 1992 and FY 1993, and the appointment of eight legislators to each organization.

For interim committees and statutory committees, the Council recommended that the FY 1992-93 budgets be as requested by the respective committees: Revenue Oversight Committee, \$37,984; Coal Tax Oversight Subcommittee, \$12,000; Administrative Code Committee, \$14,048; and Committee on Indian Affairs, \$7,200. The Council also recommends an appropriation of \$82,470 for interim studies conducted

through the study selection poll. The amount would allow approximately \$16,500 for each of five separate interim study committees.

For the Montana Districting and Apportionment Commission, the Council recommended a budget of \$43,000 to conduct its activities. The recommendation will allow approximately 20 meetings, roughly split between working sessions in Helena and public meetings/hearings throughout the state during 1991 and 1992. The Legislative Council will provide additional staff, computer assistance, and administrative support.

The Council also approved budgets for operation of the office and publication of the Montana Code Annotated and ancillary publications.

Classification and Pay Plan...Concluding a five-year effort, the Council adopted a classification and pay plan for its staff and adjusted salaries accordingly. In a separate action, salaries for the executive director and three division directors were adjusted.

Legislators Invited to Call for Particulars...Details related to the Council actions are available through the Council office. Legislators interested in them are invited to inquire.

Meeting Date Set...The date for the next meeting of the council was tentatively set for Friday, Oct. 5.

LIBRARY:

The committee minutes from the May 1990 Special Session have been copied onto microfiche. The sets of 10 fiche are available at \$5 per set from the Legislative Council Library.

RESEARCH REPORTS:

¶ A Basic System of Free Quality Public Elementary and Secondary Schools

¶ Some Issues Relating to the Trade Charge Proposed by Constitutional Initiative No. 55

¶ Montana Legislative Council Library Annual Report for Fiscal Year 1990

JOINT SELECT COMMITTEE ON WORKERS' COMPENSATION

Independent Actuarial Review Considered... The members of the Joint Select Committee on Workers' Compensation, by majority vote in a mail ballot, decided to retain an independent consultant to review the actuarial findings of the State Compensation Mutual Insurance Fund (State Fund). The consultant may also be asked to verify the reserves of the State Fund. The Committee has contacted several firms to determine their willingness and ability to undertake the project.

WATER POLICY COMMITTEE

Meeting Changed to Single Day Sept. 7... The Water Policy Committee will meet at 9 a.m., Friday, Sept. 7, in Room 104 of the Capitol for a one-day meeting instead of the two-day session previously planned. The tentative agenda includes:

¶ Water Research: A follow-up report and public comments on recommendations from the Interagency Water Research Policy Advisory Board. To encourage public comment on this issue, a synopsis of the recommendations has been forwarded to Committee members and is available to interested persons.

¶ Federal-State Water Relations:

Development: an update on the Tongue River Dam; and a report on the Missouri River management plan;

Hydro-power: a report on the U.S. Supreme Court case F.E.R.C. v. California (Rock Creek); and

Reserved Water Rights Compact Commission: a status report.

¶ Water Leasing: A review of the DFWP/DNRC draft Water Leasing Study Report. The WPC final report must be submitted to the Legislature by December 1, 1990.

¶ State Water Plan: An update on the Board of Natural Resources review of public hearings on the State Water Plan.

¶ Data Management: A discussion of the 1991 WPC final report draft section on Data Management.

¶ Water Reservations Administration: An update on the Board of Natural Resources' recommendations for improved administration of water reservations, as well as a status report on the reservation process on the Missouri and Columbia River Basins.

More information on these topics or the meeting may be obtained from the Environmental Quality Council Staff.

LEGISLATIVE FINANCE COMMITTEE

At its Aug. 3-4 meeting, the Legislative Finance Committee reviewed a number of reports, including:

Optional Medicaid Services...Montana provides 16 of 20 optional medicaid services authorized by the federal government. During fiscal 1989, the state spent \$90.89 million on optional services, of which \$26.97 million was general fund. From 1986 through 1989, most of the cost increases for optional medicaid services was absorbed by increased federal financial participation, which rose from 65.89 percent to 70.32 percent. In 1988, the state attempted to eliminate three optional services for those medicaid recipients who were not guaranteed the services under federal regulations but was enjoined from doing so by a district court. In view of that decision, the committee requested SRS to study the legal feasibility of eliminating optional services to some medicaid recipients but not others.

This report also reviewed the state medical program, which is administered by the state in the 12 assumed counties and totally financed by the state general fund. During fiscal 1989, the state spent \$5.765 million on this program, or \$14.69 per capita in the 12 assumed counties. By comparison, the two most populous non-assumed counties, Yellowstone and Gallatin, spent an average of \$2.18 per capita. The committee requested that SRS review the state medical program to determine the different levels of service in state-assumed and non-assumed counties and outline options for limiting services.

State Highway Fund Budget Projections...Montana's highway account is heading toward a deficit for several reasons: expenditures are exceeding revenues; debt service costs to retire existing bonds are increasing; and coal tax funding for the Reconstruction Trust Fund program is scheduled to end in 1993. Depending on the expenditure

levels adopted by the 1991 legislature, the highway fund will experience a deficit ranging from \$8 million to \$49 million during the 1995 biennium, under current revenue projections. In addition, Montana and other rural states could lose substantial federal highway funding under bills currently being discussed in Congress. In a "worst case" scenario, revenue equivalent to a 17 cents per gallon gasoline tax increase would be necessary to continue funding at current levels. The report projected highway fund balances at different spending levels and provided a summary of potential alternatives available to address highway funding issues.

Montana Capital Company Act... Enacted in 1983, the Montana Capital Company Act is an economic development program designed "to encourage the formation of venture and equity capital...for use in diversifying, strengthening, and stabilizing the Montana economy." The act allows a 50 percent credit against Montana taxes for money invested in a qualified capital company. Capital companies must invest 70 percent of the funds for which tax credits were claimed in qualified investments within five years. To date, the legislature has authorized \$8 million in tax credits for this program. As of June 30, 1990, \$5.8 million of these tax credits had been claimed by investors who invested \$12.3 million in the capital companies. The capital companies have placed \$2.6 million in qualified investments in Montana. The report noted that determining whether the act has achieved its statutory purpose is difficult because of lack of verified information and effective state oversight of the program. Based on the available information, it appears that the capital companies have had limited success in achieving their statutory purposes for three reasons:

- (1) the credit is being claimed for investments that could have occurred in its absence;
- (2) several capital companies are not making higher-risk or venture capital investments; and
- (3) the success rate of some of the qualified investments has done little to stabilize Montana's economy and create jobs and business opportunities.

The report concluded that fewer than 100 jobs have been created and sustained as a result of the \$12.3 million invested in Montana capital companies to date.

The committee voted to:

- (1) recommend that the Board of Investments revise its rules to collect more comprehensive information on capital companies' investments;
- (2) request the Financial Division of the Department of Commerce to fulfill its statutory responsibility to perform annual examinations of capital companies; and
- (3) request the Department of Commerce to report back to the committee at its October meeting on ways to increase state oversight of capital companies' operations and revisions to the act that would increase its positive impact on Montana's economy.

Fiscal 1990 Revenues and Supplementals...Revenue collections in the general fund and school equalization accounts in fiscal 1990 were \$38 million higher than anticipated, largely due to higher-than-expected income and corporation tax collections, higher interest earnings, and a coal tax audit collection. As a result, the combined fiscal 1990 unreserved ending fund balance for the two accounts was \$105.1 million, \$31 million above the level anticipated by the 51st Legislature.

The Governor approved supplemental requests allowing state agencies to spend \$17.5 million of fiscal 1991 funds in fiscal 1990 to cover budget shortfalls. Of this amount, \$7.4 million was general fund and \$10.1 million was other funds. Projecting from fiscal year 1990 supplementals, it appears that the 1991 legislature will be asked to approve an estimated \$35 million in supplementals (\$15 million general fund and \$20 million other funds).

Ballot Initiatives, 1990. The committee reviewed a staff report analyzing the two initiatives that will be on the ballots in November:

- (1) CI-55 which would amend Montana's constitution to prohibit the imposition of any income, property, or sales taxes and any registration, permit, or license fees on Montana businesses and residents, effective July 1, 1991, and impose a 1 percent trade charge on all financial transactions conducted wholly or partially in the state; and
- (2) I-115 which would statutorily increase tax rates for cigarettes and other tobacco products, raising approximately \$16.8 million additional revenue per year which would be earmarked for health education

programs and research. The committee voted to have copies of this informational report sent to all legislators and other elected officials throughout the state.

Meeting Oct. 12 and 13...The Legislative Finance Committee's next meeting will be Oct. 12 and 13.

WESTERN STATES LEGISLATIVE FORESTRY TASK FORCE

Meeting Held at Whitefish...Montana hosted the 70th meeting of the Western States Legislative Forestry Task Force at the Grouse Mountain Lodge in Whitefish June 29 through July 1.

Best Management Practices...During a field trip, implementation of best management practices (BMP) called for by HB 678 on State of Montana, U. S. Forest Service and private lands was reviewed and discussed. Involved were representatives from federal and state agencies, private landowners, and Montana logging and wood products associations. Discussed at length were all facets of BMP including the initial training sessions for woods workers, the resulting brochure and specific practices formulated and agreed to by all cooperators. Streamside management areas and more specifically riparian areas were emphasized with the objective that those areas not be placed off limits and allowing flexibility for management according to biological and vegetative needs.

Prospects for Industry...Speakers at a public meeting presented a dismal picture for the Montana lumber industry because of lack of timber harvest opportunities. Noted was a combination of reduced federal timber sales following completion of forest plans, delays associated with project plans (EIS and appeals), and the continuing wilderness-roadless issue that has diminished the raw material available from federal lands and caused increased demand for a limited wood supply, highly competitive bidding, and higher stumpage prices.

Resolutions Approved...Adopted were two resolutions:

¶ Requesting governors of Oregon, Washington, and California to request the President to direct the Secretary of the Interior to convene the Endangered Species Committee to consider conflicts between federal timber sale programs and the Northern Spotted Owl listing.

¶ Supporting a ban on the export of raw logs from the United States (this was amended to follow federal law and allow states to restrict exports from state lands).

Meeting in Calgary...The Task Force's next meeting is scheduled in Calgary, Alta., Sept. 7-9. There will be no general meeting in Washington, D. C., but it was agreed to have a group of members visit the national capital after Congress reconvenes in the fall to discuss the issues of the spotted owl, SB 2762, and the Tongass National Forest situation. The next general Task Force meeting will be held in Washington state in mid-November at a location to be selected by the host state.

JOINT INTERIM SUBCOMMITTEE ON MARKETING OF MOTOR FUELS

Two Bills to Get Further Study...The Joint Interim Subcommittee on Marketing of Motor Fuels concluded its meeting on Aug. 9 by deciding to advance to final review two draft bills:

- ¶ LC 36 that would prohibit below-cost sales of motor fuels; and
- ¶ LC 39 that would create a Montana statute similar to the federal Robinson-Patman Act regarding discrimination in price including provisions requiring Montana courts to give "due consideration and weight" to the interpretations of the Federal Trade Commission and the federal courts.

Other draft bills that the committee heard but decided not to consider further included:

- ¶ LC 37 that was intended to assure a franchised motor fuels dealer the right to purchase product from a distributor other than the one designated in his franchise agreement;
- ¶ LC 38 that created a Gasoline Dealers' Bill of Rights (Automotive Trades of Montana, an organization of retail service stations owners, withdrew its request for this bill); and
- ¶ LC 40 that prohibited a refiner from owning and operating retail service stations.

Next meeting set for Oct. 4...The Committee selected Thursday, Oct. 4, as the time for its next meeting when revised versions of LC 36 and LC 39 will be considered for final approval and recommendation to the Legislature. Also at that meeting the Department of Commerce will be invited to present its views on the possible consolidation of consumer protection activities. The meeting will begin at 10 a.m. in Room 104.

REVENUE OVERSIGHT COMMITTEE

Special Meeting Held...At a special meeting on Aug. 4 the Revenue Oversight Committee (ROC) considered a dispute between the Department of Revenue (DOR) and the Office of Public Instruction (OPI) relating to the distribution of railroad taxes for the 1990 tax year. In April 1990 the DOR concluded an out-of-court settlement with several railroads operating within the state (including Burlington Northern, Montana Rail Link, Union Pacific, and Soo Line) on their property tax liability for tax years 1989 and 1990. Because the settlement for the 1990 tax year was prospective in nature (i.e., determined prior to the setting of mill levies) and not specifically tied to assessed valuation, the DOR directed county treasurers to distribute settlement revenue based on 1989 mill levies and instructed county assessors to exclude railroad property from the tax base until after mill levies had been set.

Out-of-court settlements have been a fact of life in Montana since 1979 with the passage in 1976 of the federal Railroad Revitalization and Regulatory Reform Act. Some other settlements with the railroads have also been prospective, but distribution was always based on the tax levies in effect for a particular settlement year. In addition, the whole scheme of property taxation has changed since 1989. Of particular importance was the imposition of the 40-mill statewide levy for the school foundation program. Under DOR's distribution formula, an estimated \$2 million would be lost to the foundation program.

In an attempt to ensure that school equalization and local school districts received railroad revenue based on 1990 mill levies, OPI filed a Writ of Mandamus in the Helena district court that would have directed DOR to determine a 1990 assessed valuation for railroad property.

ROC heard testimony from both DOR and OPI as well as public comment concerning the dispute. The Committee mediated discussions between DOR and OPI to enhance the possibility that an agreement

satisfactory to both sides could be obtained. DOR proposed to certify a 1990 taxable value for railroad property based on 1989 values. Under this method railroads would be billed according to 1990 levies, but not more than the settlement amount. The proposal was acceptable to OPI, who agreed to withdraw its Writ. ROC unanimously endorsed the proposal and voted to support discussions between DOR and the railroads to devise an appropriate method of appraising and taxing railroad property. Finally, ROC voted to study legislation relating to deadlines for reporting taxable value to OPI and for setting budgets.

Next meeting Sept. 28...ROC will meet Sept. 28. A portion of the Committee's business will involve a joint meeting with the Legislative Oversight Committee on School Funding Implementation in Room 312 of the Capitol to consider issues related to the guaranteed tax base. Following the joint hearing the Committee will move to Room 104 of the Capitol. Agenda items for regular Committee business will include:

- (1) LFA staff report on the forecasting methods for property tax collections;
- (2) LFA staff report on fiscal 1990 revenue collections;
- (3) Department of Revenue reports on:
 - (a) 1990 mill levies and the effect of mill levies on railroad settlement;
 - (b) certification of oil and gas benchmark prices, including revenue impact and possible legislation;
 - (c) status of litigation relating to HB 703, the beneficial use tax, and the taxation of retirement income;
- (4) Revenue and taxing implications of imposing a productivity tax on forest lands in place of the current standing inventory method; and
- (5) Other Department of Revenue reports.

LEGISLATIVE OVERSIGHT COMMITTEE ON SCHOOL FUNDING IMPLEMENTATION

Sept. 28 Is Meeting Date...Instead of a two-day meeting as originally planned, the Legislative Oversight Committee on School Funding Implementation will meet only Friday, Sept. 28, at 8:30 a.m. in Room 312, State Capitol. For the first portion of the day's agenda, the Committee will meet jointly with the Revenue Oversight Committee to hear from the Office of Public Instruction and other staff members on implementation of the guaranteed tax base (GTB) program that is effective for FY 1991 for

equalization of two school funding areas: the permissive amount of school district general funds and the county retirement fund. The two committees will discuss application of the GTB program for other areas of school funding, such as transportation and capital improvement and outlay.

The remainder of the morning agenda will be devoted to: a staff report on options for equalizing funding for school district capital outlay; and a report from the Department of Administration on the Montana Educational Telecommunication Project. In the afternoon, a Committee work session will concentrate on draft legislation designed to clarify various provisions from House Bill 28. The committee will also discuss legislative solutions to other school funding equalization issues, such as transportation funding and elimination of tuition.

JOINT LEGISLATIVE COMMITTEE ON ACCOUNTABILITY AND QUALITY IN EDUCATION

Basic Education Definition Discussion... Discussion of the definition of a basic system of education will be the topic of the Committee on Accountability and Quality in Education on Friday, Sept. 7. The Committee will take public testimony from interested persons and organizations. The meeting will begin at 9 a.m. in Room 108 of the State Capitol.

COMMITTEE ON INDIAN AFFAIRS

Sept. 13 Activities... At its fourth meeting of the interim on Thursday, Sept. 13, the major topic of the Committee on Indian Affairs will be Native Americans in urban Montana. Speakers will include Margie Bear Don't Walk of the Indian Health Board in Billings, Deanna Parisian from the Great Falls Public Schools, George Henkle of the Montana United Indian Association, and Anne MacIntyre of the Human Rights Commission. Bea Lunda, Indian Child Welfare Specialist with the Department of Family Services, will present a report to the Committee. Work will begin at this meeting on the 1991 session legislative agenda which will be finalized at the Committee's last meeting in October. The meeting will begin at 10 a.m. in Room 104 of the Capitol.

ENVIRONMENTAL QUALITY COUNCIL

Meeting Set in Butte...The Environmental Quality Council will meet at the War Bonnet Inn in Butte at 8 a.m. Monday, Oct. 1, and will continue through Tuesday Oct. 2. Montana Environmental Policy Act issues will start the meeting when the Council is updated on the response to the staff memo on the adequacy of environmental review, which outlined the environmental review process and identified concerns with the process and was sent to over 250 interested individuals, organizations, and governmental units. On specific environmental review of mining issues, Art Wittich, Chairman of the Governor's Mine Permitting Improvement Advisory Council, will outline its recommendations for which it hopes to have implementing legislation recommendations ready for the 1991 session. Representatives from the groups on the Advisory Council will be present to answer questions.

Ground Water Quality...The SJR 22 study on ground water quality protection and management will conclude Monday's business. The EQC will review its options for addressing hard rock mining, agricultural chemical, and underground storage tank issues discussed at previous Council meetings throughout the biennium. Hard rock mining issues include the differences in regulatory requirements for small miners as compared to large mining operations, the separate statutory responsibilities of the Department of State Lands and Department of Health and Environmental Sciences, and adequacy of bonds for water quality cleanup operations. There are differing opinions about the potential scope and significance of ground water contamination by agricultural chemicals and about the proper focus for government programs and policies. The major differences in proposed strategies generally can be described as better management of agri-chemicals versus reduction in agri-chemical use. The EQC will consider various options for implementing these strategies, including the need for better funding for the 1989 Montana Agricultural Chemical Ground Water Protection Act. The EQC's review of underground storage tank issues will primarily concern implementation of 1989 legislation and the financial problems for small businesses to comply with new regulations. A final component of the SJR 22 study is a discussion of Water Quality Bureau staff and funding needs to implement more preventive approaches to ground water quality protection.

Oil and Gas Conservation...Tuesday's meeting will begin with a review of the Montana Board of Oil and Gas Conservation environmental review process. A Board representative will discuss the status of the Board's

efforts to the incorporate environmental review into its oil and gas drill permitting procedures. The Board's plans for revising its rules relating to drilling waste disposal, reserve pit design and construction, pit reclamation, and water disposal will also be summarized.

Solid Waste Study...The SJR 19 Solid Waste Study will again be a major agenda item. The Council receive final options and recommendations from the Solid Waste Management Advisory Committee on importation, financing, integrated waste management, and landfill regionalization. Public comment will be taken and is encouraged on these issues as the Council deliberates on and develops proposals for administrative and legislative action.

Infectious Waste...The Council also will review and discuss proposed guidelines for the management of infectious waste.

Rural Development Study...To refine its options under the Rural Development Study, EQC requested further information on the components of sewage disposal, geothermal development, and residential development. The discussion will include agency representatives and a review of relevant legislation from Montana and other states.

Log Scaling Options...After three public hearings, EQC will begin to consider its options from the log scaling study.

COAL TAX OVERSIGHT SUBCOMMITTEE

Oct. 1 Meeting Tentative...Although the Coal Tax Oversight Subcommittee has scheduled its final meeting for 10 a.m. Monday, Oct. 1, in Room 104 of the Capitol, the lack of substantive business to address may result in cancellation of the session. Interested persons will be informed if the Subcommittee decides to hold the meeting as scheduled.



INTERIM CALENDAR

Sept. 3, Labor Day, holiday

Sept. 7, Water Policy Committee,
Room 104

Sept. 7, Joint Legislative
Committee on Accountability and
Quality in Education, Room 108

Sept. 7-9, Western States
Legislative Forestry Task Force,
Calgary, Alta.

Sept. 12, Montana-Western

Canadian Provinces Boundary Advisory Committee, noon, Rainbow Hotel,
Great Falls.

Sept. 13, Committee on Indian Affairs, Room 104

Sept. 28, Legislative Oversight Committee on School Funding
Implementation, Room 104

Sept. 27 and 28, Revenue Oversight Committee, Room 312

Oct. 1, Coal Tax Oversight Subcommittee, Room 104, 10 a.m.

Oct. 1, Legislative Audit Committee, Sunrise Hearings, State Capitol

Oct. 1 and 2, Environmental Quality Council, War Bonnet Inn, Butte

Oct. 4, Joint Interim Subcommittee on Marketing of Motor Fuels, Room
104, 10 a.m.

Oct. 4, Committee on State Employee Compensation, Room 108

Oct. 5, Legislative Council, Room 104, State Capitol

Oct. 6, Joint Legislative Committee on Accountability and Quality in
Education, Room 104

Oct. 8, Columbus Day, Holiday

Oct. 11, Committee on Indian Affairs, Room 104

Nov. 6, General Election, Holiday

Nov. 9, Water Policy Committee, Room 104

Nov. 12, Veterans Day, Holiday

Nov. 14 and 15, Environmental Quality Council, Room 104

Nov. 16, Revenue Oversight Committee, Room 104

Nov. 22, Thanksgiving Day, Holiday

Nov. 23, Heritage Day, Holiday

Nov. 27, Water Policy Committee, Room 104

Dec. 6 and 7, Environmental Quality Council, Room 108

Dec. 7, Revenue Oversight Committee, Room 104

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